E. GUIDELINES FOR AVOIDING AND RESOLVING DISCOVERY DISPUTES

(a) Fed. R. Civ. P. 33(a) requires that a party "furnish such information as is available to the party." That you may have an objection to interrogatories as excessively burdensome is not an excuse for your responding with nothing but objections or a motion for a protective order. You must forthwith furnish the information responsive to the interrogatories that is available through reasonable efforts. Failure to do so is regarded as sufficient ground for imposition of sanctions.

(b) Fed. R. Civ. P. 34(b) provides that "[i]f objection is made to part of an item or category, the part shall be specified." It is implicit, if not explicit, that production or allowance of inspection "will be permitted as requested" except as to the part or parts to which stated objections apply. Thus, the fact that a demand for production is objectionable in part is not an excuse for producing nothing. Failure to produce documents or parts of documents to which no objection applies is regarded as sufficient ground for imposition of sanctions.

(c) Fed. R. Civ. P. 36(a) provides that "when good faith requires that a party . . .deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder." Thus, a request for an admission which is objectionable in part is not an excuse for failure to respond to all other parts to which the ground of objection is not applicable. Failure to respond accordingly is regarded as sufficient ground for imposition of sanctions.

(d) Interrogatories create problems when forms are used without proper modification to fit the case, when "identify", "document" and the like become three page definitions. To avoid problems, the court directs that "identify" means **name, address, home and work telephone numbers** and "document" means **information, regardless of the medium of preservation**. Further, much expense, injustice and delay can be avoided if Interrogatories are case-specific.

(e) A foreseeable problem with document production arises when counsel has not received from their client(s) some or all of the requested documents. Rather than file a set of blanket objections that will likely not be applicable to more than a few documents, respond as required with the information you do have, indicate that further responsive documents are expected, and reserve the right to make specific objection as to any such document(s) when received. The court will treat the reservation, so long as made within thirty (30) days of service, as doing just what it says: reserving the right to make a proper objection, if there is a proper objection, when you have the document(s) in front of you. Such a reservation is not a free pass to delay document production. On the contrary, production of those documents should be treated as urgent, with time being of the essence. Of course, this problem can be greatly reduced if good trial lawyer practice is followed: the client is told at the beginning of the relationship that information relating to the issues and facts in the lawsuit (e.g., the complaint, counterclaim, answer) is certain to be requested, that it should be gathered without waiting for a formal request. Counsel must give the necessary priority to discovery requests so that reservations are limited and more the exception than the norm. Finally, as with Interrogatories, much expense, injustice and delay can be avoided if production requests are case-specific.

(f) Fed. R. Civ. P. 26(g) provides that a party's attorney must sign each discovery request, response, or objection. The signature constitutes a certification that to the best of the attorney's knowledge, information, and belief formed after a reasonable inquiry, the discovery request, response, or objection is: "(1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive. . ." Certification in violation of Rule 26(g) is sufficient ground for imposition of sanctions.

(g) Interrogatory or production requests for social security numbers ("SSNs") are disfavored because of identify theft and privacy concerns. Admissible impeachment materials are often available through other witnesses and from public records that do not require SSNs. Further, the information obtained through the use of SSNs, e.g. credit reports, marital history, other litigation, job losses or the like is almost always collateral and hence inadmissible. The background information obtained from SSNs is used by some attorneys to embarrass, intimidate or harass deposition witnesses whose testimony is damaging to the attorney(s) case, something that would never be allowed at trial. Counsel may ask for SSNs in deposition after stating the grounds for the inquiry. The deponent or opposing counsel may condition providing SSNs on the entry of an appropriate Protective Order, and the SSNs obtained in the deposition shall not be used, revealed or disclosed until the entry of the Protective Order. A true copy of the information obtained using SSNs shall be provided to the deponent and opposing counsel at either's request; there shall be no charge for the information except copying at $.10/page. The information shall be provided upon receipt by the obtaining party and no later than 7 days before the Final Pretrial Conference.

(h) Character is what you do when no one's looking. It may prove advantageous in the short term to use your creative talents to find ways to avoid providing discovery that you know has been requested and is due to be furnished, but which "hurts the case". The client may bring pressure on you to do so, so may a law partner, a firm superior, a third party payor, or even a friend. If you participate in the concealment of information that is discoverable (yourself or by your client with your knowledge), or fail to reveal it upon learning of it, you not only commit fraud upon the opposing party and the court, you also hand over control of your license to practice law to someone who, by making the request or engaging in the conduct, has demonstrated a willingness to break the law. If in doubt, disclose the information. The use of an appropriate Protective Order is one way of complying with your professional obligations. So is withdrawal from representation. Finally, if nothing else will make you stop and think, remember that Alabama recognizes third party spoliation of evidence as an independent tort, Smith v. Atkinson, 771 So.2d 429 (Ala. 2000) and that leave to amend a complaint (or a counterclaim) is freely granted in the interests of justice.